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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,034	07/22/2003	Mark Goldberg	103568-49597	9528
26345	7590	05/25/2004	EXAMINER	
GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE 1 RIVERFRONT PLAZA NEWARK, NJ 07102-5497			NOVOSAD, JENNIFER ELEANORE	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/625,034	Applicant(s) GOLDBERG, MARK	
	Examiner Jennifer E. Novosad	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07-22-2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because in paragraph [0001], "filed October 21, 2001, now pending" should be changed to --filed October 25, 2001, now U.S. Patent No. 6,622,876". It is noted that the filing date written in the specification is incorrect.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said upper wire of said center support member truss" in lines 6-7. There is insufficient antecedent basis for this limitation in the claim. It is noted that the "side" member truss, not a center member truss, has been set forth as having an upper wire. Also, the claim does not properly set forth a center member truss. Accordingly, it is unclear whether a center member truss is being positively claimed as part of claim 1, especially in view of claims 2, 4, and 5 which properly set forth a "center truss". Thus, claim 1 has been examined as though a center truss is not part of the claimed invention (of claim 1 only).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,750,626 (Nicely '626).

Nicely '626 discloses a wire shelf (11) comprising a pair of side member (see Figure 3 and front and rear sides of Figure 1); a plurality of shelf wires (22) spaced apart from one another (see Figure 1) and being joined to the side members and each shelf wire (22) having a topside and an underside; each of the side members being comprised of a side member truss having an upper wire (23) and a lower wire (24) spaced apart from one another; the upper wire (23) of each of the side member trusses being joined to the topside of the shelf wires (22); the side members also including a corrugated wire (25) which is disposed between the upper (23) and lower (24) wires and joined to the lower wire (24) at a plurality of locations and *directly* to at least some of the undersides of the shelf wires (22); the shelf (11) further comprising at least four post supporting members (16-18) each disposed at a respective corner of the wire shelf (11), a pair of end members (right and left sides of Figure 1; including top element 23 in Figure 4) comprised of a truss member (see Figure 1) having an upper (23) and lower (24) wire, and the end members being joined at each end to a post supporting member; each of the side members (Figure 3) joined (see Figure 2) at each end to one of the post supporting members.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicely '626 as applied to claims 1 and 3 above, and further in view of U.S. Patent No. 5,390,803 (McAllister '803).

Nicely '626 discloses the wire shelf as advanced above.

The claims differ from Nicely '626 in requiring a center truss that extends parallel to the side member trusses and is attached to the shelf wires (claims 2 and 4) or to the end members (claim 5).

McAllister '803 teaches a wire shelf assembly which comprises post supporting members (16), a wire shelf having end members (Figures 3 and 4) and side members (Figure 2) joined at ends to the supporting members (16) and the end and side members each including a truss (24 and 30, respectively), shelf wires (12) joined to the side members, and a center truss member (including 14a, 26a, and 30a) extending parallel (see Figure 1) to the side members and attached (see Figure 5) to the shelf wires (12) and to the end members (see far left side of Figure 5 at numeral 12).

Accordingly, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided the wire shelf with a center truss,

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attached to the shelf wires and to the end members, as taught by McAllister '803, for increased structural support and stability of the wire shelf.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
May 11, 2004